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FOLEY & LARDNER LLP
777 EAST WISCONSIN AVENUE
SUITE 3800
MILWAUKEE, WI 53202-5308

EXAMINER

SUBRAMANIAN, NARAYANSWAMY

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/593,106
Filing Date: June 13, 2000
Appellant(s): WILLIAMS ET AL.

MAILED

DEC 19 2005

GROUP 3600

Jean M. Tibbetts (Reg. No. 43,193)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 21, 2005 appealing from the Office action mailed December 2, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,088,686	WALKER et al	7-2000
6,029,149	DYKSTRA et al	02-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

9(a) Claims 1, 4-8, 10, 28, 31-33, 35, 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (US Patent 6,088,686).

With reference to claims 1, 4-8, 10, 28, 31-33, 35, 53 and 54, Walker discloses a method and system of an on-line loan application and qualification method, comprising the steps of: receiving a loan application data for a loan, the loan application data including financial information concerning a borrower and specifying a loan principal; identifying a plurality of approved loan products based on the loan application data, the plurality of approved loan products being identified using an automated underwriting engine that generates underwriting recommendations; calculating a customized interest rate based on the financial information for each of the plurality of approved loan products; and providing information regarding approval status and the customized interest rate for presentation to the borrower for each of the plurality of approved loan products for borrower comparison and selection of one of the plurality of approved loan products (See Walker Abstract, Column 2 lines 1-53, Column 3 lines 37-47, Column 6 lines 16-64 and Column 9 lines 32-65). Generating underwriting recommendations using an automated underwriting engine is inherent in the system of ACAPS, the loan principal, the step of determining the likelihood that said potential borrower will be approved without reliance on a collateral appraisal, obtaining a credit report on the borrower, verifying collateral (See Walker Claims 15 and 24) loan product selected for submission to the underwriting engine by the borrower and at least one loan product selected for submission to the underwriting engine automatically and not by the borrower (See Walker Column 6 lines 25-30) and the approval status and customized

rate information presented for side-by-side comparison are inherent in the disclosure of Walker. Verifying collateral is interpreted to include the steps of determining an appropriate level of collateral appraisal field work to be performed including one of waived, exterior-only collateral inspection and interior and exterior collateral inspection.

Walker does not explicitly teach the steps where the loan is a mortgage loan or mortgage refinance loan and using at least in part underwriting guidelines of a secondary mortgage market purchaser.

Official notice is taken that these steps are well known in the art. Home mortgage loans help individuals and families purchase homes and mortgage refinance loans help existing mortgage holders to lower their payments by taking advantage of lower interest rates. Using the underwriting guidelines of a secondary mortgage market purchaser increases the likelihood of selling the loan to a secondary mortgage market purchaser and provides funds for the lender to make new or additional loans.

It would have been obvious to one with ordinary skill in the art at the time of invention to include these steps to the disclosure of Walker. The combination of the disclosures taken as a whole suggests that at least some lenders of mortgage loans and mortgage refinance loans would have benefited from the increased likelihood of selling the loan to a secondary mortgage market purchaser and generating funds to make new or additional loans.

9(b) Claims 2, 11-14, 16, 23, 25, 26, 29, 36-39, 41 and 55-58 are rejected under 35 U.S.C.

103(a) as being unpatentable over Walker et al (US Patent 6,088,686) in view of Dykstra et al (US Patent 6,029,149).

With reference to Claims 2 and 29, Walker teaches a method and system of claims 1 and 28 respectively as discussed above including the step of receiving a selection of one of the plurality of approved mortgage products (See Walker Figure 50, Box 2236).

Walker does not explicitly teach the steps of receiving a lock of the customized interest rate for the selected loan product and aggregating closing costs into the loan principal of the loan.

Dykstra teaches the step of receiving a lock of the customized interest rate for selected loan product (See Dykstra Column 7 lines 47-50). Locking the rates protects the borrower against any increases in interest rates. Official notice is taken that aggregating closing costs into said loan principal of said selected loan is old and well known in the art. Aggregating closing costs help lenders lend more money and help borrowers borrow without making a down payment.

It would have been obvious to one with ordinary skill in the art at the time of invention to include these steps to the disclosure of Walker. The combination of the disclosures taken as a whole suggests that borrowers and lenders would have benefited as discussed above.

With reference to Claims 11-14, 16, 55 and 56, Walker teaches an on-line mortgage loan application and qualification method, comprising the steps of: obtaining loan application data for a loan, the loan application data including financial information concerning a borrower and specifying a loan principal; identifying a plurality of approved loan products based on the loan application data, the plurality of approved loan products being identified using an automated underwriting engine that generates underwriting recommendations; calculating a customized interest rate based on the financial information for each of the plurality of approved loan products; providing information regarding approval status and the customized interest rate for presentation to the borrower for each of the plurality of approved loan products

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for borrower comparison and selection of one of the plurality of approved mortgage products, receiving an on-line operator selection of one of the plurality of approved mortgage products. (See Walker Abstract, Figure 50, Box 2236, Column 2 lines 1-53, Column 3 lines 37-47, Column 6 lines 16-64 and Column 9 lines 32-65). Generating underwriting recommendations using an automated underwriting engine is inherent in the system of ACAPS, the loan principal, the step of determining a probability that said potential borrower will be approved based on a credit score, loan product selected for submission to the underwriting engine by the borrower and at least one loan product selected for submission to the underwriting engine automatically and not by the borrower (See Walker Column 6 lines 25-30) and the approval status and customized rate information presented for side-by-side comparison are inherent in the disclosure of Walker. Credit scores are interpreted to include proxy credit scores also and the network (Column 12 lines 36-48) is interpreted to include a global computer network including the Internet.

Walker does not explicitly teach the steps wherein the loan is a mortgage loan or mortgage refinance loan, using at least in part underwriting guidelines of a secondary mortgage market purchaser; providing on-line updated customized interest rate information for presentation to the borrower during a float period after the operator selection is received and receiving an on-time operator lock of the customized interest rate for the selected loan product.

Dykstra teaches the step of receiving a lock of the customized interest rate for selected loan product (See Dykstra Column 7 lines 47-50). Locking the rates protects the borrower against any increases in interest rates. Official notice is taken that the other steps are well known in the art. Home mortgage loans help individuals and families purchase homes and mortgage refinance loans

help existing mortgage holders to lower their payments by taking advantage of lower interest rates. Using the underwriting guidelines of a secondary mortgage market purchaser increases the likelihood of selling the loan to a secondary mortgage market purchaser and provides funds for the lender to make new or additional loans. Aggregating closing costs help lenders lend more money and help borrowers borrow without making a down payment.

It would have been obvious to one with ordinary skill in the art at the time of invention to include these steps to the disclosure of Walker. The combination of the disclosures taken as a whole suggests that borrowers and lenders would have benefited as discussed above.

With reference to Claims 23, 25, 26, 36-39, 41, 57 and 58, Walker teaches an on-line mortgage loan application and qualification method and system, comprising the steps of obtaining loan application data for a loan, the loan application data including financial information concerning a borrower and specifying a loan principal; identifying a plurality of approved loan products based on the loan application data, the plurality of approved loan products being identified using an automated underwriting engine that generates underwriting recommendations; calculating a customized interest rate based on the financial information for each of the plurality of approved loan products including calculating adjustments to said required yield associated with the mortgage product based on at least one of (i) credit risk posed by the borrower, (ii) collateral risk associated with not requiring a collateral appraisal, (iii) loan-to-value ratio, and (iv) loan purpose; providing information regarding approval status and the customized interest rate for presentation to the borrower for each of the plurality of approved loan products for borrower comparison and selection of one of the plurality of approved mortgage products, receiving an on-line operator selection of one of the plurality of

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approved mortgage products. (See Walker Abstract, Figure 50, Box 2236, Column 2 lines 1-53, Column 3 lines 3747, Column 6 lines 16-64 and Column 9 lines 32-65). Generating underwriting recommendations using an automated underwriting engine is inherent in the system of ACAPS, the loan principal, the step of determining a probability that said potential borrower will be approved based on a credit score, loan product selected for submission to the underwriting engine by the borrower and at least one loan product selected for submission to the underwriting engine automatically and not by the borrower (See Walker Column 6 lines 25-30) and the approval status and customized rate information presented for side-by-side comparison are inherent in the disclosure of Walker. Credit scores are interpreted to include proxy credit scores also, price points being determined by several credit worthiness factors are interpreted to include credit risk posed by the borrower, collateral risk associated with not requiring a collateral appraisal, loan-to-value ratio, and loan purpose and the network (Column 12 lines 36-48) is interpreted to include a global computer network including the Internet.

Walker does not explicitly teach the steps wherein the loan is a mortgage loan or mortgage refinance loan, using at least in part underwriting guidelines of a secondary mortgage market purchaser, receiving an on-line operator selection of a float option, providing on-line updated customized interest rate information for presentation to the borrower during a float period after the operator selection is received and receiving an on-line operator lock of the customized interest rate for the selected loan product.

Dykstra teaches the step of receiving a lock of the customized interest rate for selected loan product (See Dykstra Column 7 lines 47-50). Locking the rates protects the borrower against any increases in interest rates. Official notice is taken that the other steps are well known in the art.

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Home mortgage loans help individuals and families purchase homes and mortgage refinance loans help existing mortgage holders to lower their payments by taking advantage of lower interest rates. Using the underwriting guidelines of a secondary mortgage market purchaser increases the likelihood of selling the loan to a secondary mortgage market purchaser and provides funds for the lender to make new or additional loans. Aggregating closing costs help lenders lend more money and help borrowers borrow without making a down payment.

It would have been obvious to one with ordinary skill in the art at the time of invention to include these steps to the disclosure of Walker. The combination of the disclosures taken as a whole suggests that borrowers and lenders would have benefited as discussed above.

(10) Response to Argument

In response to applicant's argument about claims 1, 2, 4-8, 10-14, 16, 23, 25, 26, 28, 29, 31-33, 35-39, 41 and 53-58 that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine would have been obvious to one of ordinary skill in the art. In this case the motivation to combine is that at least some lenders of mortgage loans and mortgage refinance loans would have benefited from the increased likelihood of selling the loan to a secondary mortgage market purchaser and generating funds to make new or additional loans.

In response to applicant's argument about claims 1, 4-8, 10, 28, 29, 31-33, 35, 53 and 54, that Walker does not teach the step of "identifying a plurality of approved mortgage products" the examiner concurs. Walker was not relied upon to teach this step as discussed in the rejection above. Official notice was taken to fill this void because Walker does not explicitly teach mortgages. Walker instead teaches identifying loans and credit products in general (See Walker Column 6 lines 25-38). Since Walker and the official notice taken are in the same field of endeavor it would have been obvious to combine the two. In response to applicant's argument that Walker does not teach the step of "providing approval status and customized interest rate information for each of the plurality of approved mortgage products for borrower comparison and selection", the Examiner respectfully disagrees. Walker teaches the steps of recommending to applicants specific products with pre-determined credit qualified offer amounts (See Walker Column 2 lines 40-43). The credit products are interpreted to include mortgage products also. The specific products are based on the information provided by the applicants and hence the pricing of these products is customized for the applicant (See Walker Column 2 lines 2-13). Borrower comparison and selection is inherent in the disclosure of Walker. Appellants arguments that the identified credit products are cross sell candidates is irrelevant because the motivation for offering the credit products need not be the same as what is described in the specification. Hence Walker in combination of the official notice taken teaches all the steps of the claimed invention. The motivation to combine has already been addressed above.

With respect to Applicant's arguments about claims 2, 11-14, 16, 23, 25, 26, 29, 36-39, 41 and 55-58 that Walker does not teach "identifying a plurality of approved mortgage products. . .", "providing information regarding approval status and the customized interest rate for

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presentation to the borrower for each of the plurality of approved mortgage products for borrower comparison and selection of one of the plurality of approved mortgage products”, these limitations have already been discussed above. Regarding the arguments that neither Walker nor Dykstra teach the limitation of “receiving an on-line operator lock of the customized interest rate for the selected mortgage product.”, the examiner respectfully disagrees. Dykstra clearly indicates in Column 7 lines 47-50 verification of the loan approval by the lender which implies lock of the customized interest rate for the selected credit product. Also in mortgage lending, providing a lock of the customized interest rate is old and well known. This allows the buyer of a home to go through the other formalities associated with the purchase of a residence without worrying about the changes in the interest rate in the interim. Hence Walker in combination with Dykstra teaches all the steps of the claimed invention. The motivation to combine has already been addressed before.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Dr. Narayanswamy Subramanian
Examiner, Art Unit 3624

December 8, 2005
Conferees:

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Vincent Millin
SPE, Art Unit 3624



VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Hani Kazimi
Primary Examiner, Art Unit 3624



HANI M. KAZIMI
PRIMARY EXAMINER